

RECEIVED

MAR - 9 2023

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY CLERKUNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

## Attachment 2 - EEOC Complaint Form

FILED

April 25, 2023

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXASVictor CastroBY: nm  
DEPUTY

(Name of plaintiff or plaintiffs)

v.

Civil Action Number

SA 23CA 0294 OG

(Supplied  
by Clerk's Office)Louis De JoyPostmaster General

(Name of defendant or defendants)

COMPLAINT

1. This action is brought by Victor Castro, Plaintiff,  
pursuant to the following selected jurisdiction:

(Please select the applicable jurisdiction)

☒ Title VII of the Civil Rights Act of 1964 (42 USC §§ 2000e et seq.) Employment  
Discrimination on the basis of race, color, sex (gender, pregnancy and sexual harassment),  
religion or national origin.

☐ The Age Discrimination in Employment Act (29 USC §§ 621 et seq.) (ADEA).

☐ The Americans With Disabilities Act (42 USC §§ 12102 et seq.) (ADA).

☐ The Equal Pay Act (29 USC § 206(d)) (EPA).

☐ The Rehabilitation Act of 1973 (29 USC § 791 et seq.) (Applicable to federal employees  
only).

2. Defendant Louis DeJoy (Defendant's name) lives  
at, or its business is located at \_\_\_\_\_  
(street address), \_\_\_\_\_ (city), \_\_\_\_\_  
(state), \_\_\_\_\_ (zip).

- 3a. Plaintiff sought employment from the defendant or was employed by the defendant at 10410 Perrin Beitel Rd. (street address), (city), San Antonio (state), Texas, 78284 (zip).
- 3b. At all relevant times of claim of discrimination, Defendant employed \_\_\_\_\_ (#) employees. If defendant is a union, at all relevant times of claim of discrimination, Defendant had \_\_\_\_\_ (#) members.
4. Defendant discriminated against plaintiff in the manner indicated in paragraph 8 of this complaint on or about \_\_\_\_\_ (month) \_\_\_\_\_ (day) \_\_\_\_\_ (year). If incidents of discrimination occurred more than one day, please indicate the beginning and ending dates of such acts: 1-1-18 - 9-20-22.
5. Plaintiff filed charges against the defendant with the Equal Employment Opportunity Commission (E.E.O.C.) charging defendant with the acts of discrimination indicated in paragraph 7 of this complaint on or about \_\_\_\_\_ (month) September (day) 29, 2022 (year). (Not applicable to federal civil service employees).
- 6a. The E.E.O.C. issued a **Notice of Right to Sue** which was received by plaintiff on (month) January (day) 23, 2023 (year). (Not applicable to ADEA and EPA claims or federal civil service employees).

**VERY IMPORTANT NOTE:**

**PLEASE ATTACH A COPY OF YOUR NOTICE OF RIGHT TO SUE AND THE ENVELOPE IN WHICH IT WAS RECEIVED TO THIS COMPLAINT.**

- 6b. Please indicate below if the E.E.O.C issued a **Determination** in your case:

☒ Yes  
☐ No

**VERY IMPORTANT NOTE:**

**IF YOU CHECKED "YES", PLEASE ATTACH A COPY OF THE E.E.O.C.'S DETERMINATION TO THIS COMPLAINT**

7. Because of plaintiff's:

(Please select the applicable allegation(s))

- ☒ Race (If applicable, state race) Hispanic
- ☐ Color (If applicable, state color) \_\_\_\_\_

- ☐ Sex (gender, pregnancy or sexual harassment) (If applicable, state sex and claim)
- ☐ Religion (If applicable, state religion) \_\_\_\_\_
- ☐ National Origin (If applicable, state national origin) \_\_\_\_\_
- ☐ Age (If applicable, state date of birth) \_\_\_\_\_
- ☐ Disability (If applicable, state disability) \_\_\_\_\_
- ☐ Prior complaint of discrimination or opposition to acts of discrimination.  
(Retaliation) (If applicable, explain events of retaliation) \_\_\_\_\_

The defendant: **(please select all that apply)**

- ☐ failed to employ plaintiff.
- ☐ terminated plaintiff's employment.
- ☐ failed to promote plaintiff.
- ☐ harassed plaintiff.
- ☐ other (specify) \_\_\_\_\_

- 8a. State **specifically** the circumstances under which defendant, its agent, or employees discriminated against plaintiff **PERSONALLY**:

**VERY IMPORTANT NOTE:**      **INCLUDE SPECIFIC DATES, SPECIFIC EVENTS,**  
**AND ANY SPECIFIC COMMENTS MADE BY**  
**DEFENDANT PERTAINING TO THE**  
**DISCRIMINATION CLAIM ALLEGED ABOVE.**

- 8b. List any **witnesses** who would testify for plaintiff to support plaintiff's allegations and the substance of their testimony:

Claudia Castro, Frank David,

- 8c. List any **documentation** that would support plaintiff's allegations and explain what the documents will prove:

letter from VMF manager Joe Vega, letter from USPS employee

9. The above acts or omissions set forth in paragraphs 7 and 8 are:
- ☐ still being committed by defendant.  
☐ no longer being committed by defendant.
10. Plaintiff should attach to this complaint a copy of the charge filed with the Equal Employment Opportunity Commission. This charge is submitted as a brief statement of the facts supporting this complaint.

WHEREFORE, plaintiff prays that the Court grant the following relief to the plaintiff:

- ☐ Defendant be directed to employ plaintiff.
- ☐ Defendant be directed to re-employ plaintiff.
- ☐ Defendant be directed to promote plaintiff.
- ☒ Defendant be directed to \_\_\_\_\_  
and that the Court grant such other relief as may be appropriate, including injunctive orders, damages, costs and attorney's fees.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

3-9-23

Date

Victor Castro

Signature of Plaintiff

323 Shannon Ridge

Address of Plaintiff

Floresville TX. 78114

City

State

Zip Code

Telephone Number(s)

National EEO Investigative Services Office



**UNITED STATES POSTAL SERVICE  
EQUAL EMPLOYMENT OPPORTUNITY  
IN THE MATTER OF:**

VICTOR CASTRO  
323 Shannon Ridge  
Floresville, TX 78114-6557  
Complainant,

USPS Tracking No. Complainant:  
9114 9022 0078 9724 1596 68

v.

LOUIS DEJOY  
Postmaster General  
United States Postal Service  
Headquarters  
Agency.

Agency Case No. 4V-417-0003-22

Date Filed Formal: December 29, 2022

***DISMISSAL OF FORMAL EEO COMPLAINT***

Receipt of your Formal Complaint of Discrimination referenced above, is herein acknowledged. This is the Postal Service's final decision on the above-cited discrimination complaint.

Specific Issue(s): You alleged discrimination based on Race (Hispanic), Color (Brown), and Age (DOB: 09/08/1962) when: On August 22, 2022, and on prior dates, you and your employees at Cowboys Garage were subjected to racist comments and insults by USPS employees at the San Antonio Vehicle Maintenance Facility.

Chronology

You were the owner of Cowboys Garage which was a contractor with the San Antonio VMF at the time of the alleged discriminatory action. The record reflects that you requested pre-complaint processing on September 29, 2022, and were issued a Notice of Right to File an Individual Complaint of Discrimination (PS Form 2579-A) on December 22, 2022. Subsequently, on December 29, 2022, you filed a formal complaint of discrimination with the agency.

Analysis and Conclusion

The Equal Employment Opportunity Commission applies the common law of agency test to determine whether an individual could be considered an agency employee. *See Ma v. Department of Health and Human Services*, EEOC Appeal Nos. 01962389 & 01962390 (May 29, 1998) (citing *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318, 323-24 (1992)). In making that determination, the Commission will look to the following non-exhaustive list of factors: (1) the extent of the employer's right to control the means and manner of the worker's performance; (2) the kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision; (3) the skill required in the particular occupation; (4) whether the "employer" or the individual furnishes the equipment used and the place of work; (5) the length of time the individual has worked; (6) the method of payment, whether by time or by the job; (7) the manner in which the work relationship is terminated, i.e., by one or both parties, with or without notice and explanation; (8) whether annual leave is afforded; (9) whether the work is an integral part of the business of the "employer"; (10) whether the worker accumulates retirement benefits; (11) whether the "employer" pays social security taxes; and (12) the intention of the parties. *See Ma, supra*. It should be noted that there is "no shorthand formula or magic phrase that can be applied to find the answer....All of the incidents of the relationship must be assessed and weighed with no one factor being decisive" *Id.*

A review of the record indicates that your business has a contact with the Agency to perform work on Agency vehicles as necessary. The work in question occurs at your shop utilizing your equipment and is completed by the employees of your business. There is no indication that any Agency employees supervise the employees of your business in the performance of their duties. Also, there is no indication that you or your employees are directly paid by the Agency or receive any benefits such as vacation time or retirement benefits from the Agency.

Since you are not able to show that you are an "employee" rather than a Contractor/Supplier, you do not have standing to file a complaint with the Agency. The Commission has reviewed similar agency agreements in the past and reached the very same conclusion that the persons who initiated those cases were independent contractors and not employees and their cases were dismissed for failure to state a claim. *See Beard v. U.S. Postal Service*, EEOC Appeal No. 01A03926 (August 22, 2000); also *Brown v. U.S. Postal Service*, EEOC Appeal No. 01A05797 (April 6, 2001).

Therefore, your complaint is now **dismissed** in accordance with 29 C.F.R. 1614.107(a)(1) for failure to state a claim as failing to state a claim.

#### Appeal to the Equal Employment Opportunity Commission

If you are dissatisfied with this decision you may appeal to the Equal Employment Opportunity Commission **within 30 calendar days** of the date of your receipt of the Agency's final action, or, if you are represented by an attorney, **within 30 calendar days** of your attorney's receipt of this action.

You may file your appeal by several alternative methods. You may use the EEOC's Public Portal located at <https://publicportal.eeoc.gov/> where you can also upload selected

documents, and manage your personal and representative information. You may also mail the appeal to the Director, Federal Operations, Equal Employment Opportunity Commission (EEOC), P.O. Box 77960, Washington, DC 20013-8960 or submit by facsimile to (202) 663-7022. If you elect to file an appeal by mail or fax, you must use EEOC Appeal Form 573, a copy of which is enclosed. Any supporting statement or brief must be submitted to the EEOC within **30 calendar days of filing the appeal**.

If you use EEOC's Public Portal to file an appeal or submit a brief, you do not need to serve the agency. If you mail or fax the request for an appeal, you must also submit a copy of the appeal or brief to the agency's designated office: National EEO Investigative Services Office USPS, P.O. Box 21979, Tampa, FL 33622-1979. In or attached to the appeal to the EEOC, you must certify the date and method by which service of the appeal was made on the agency's office.

Failure to file within the 30-day period could result in the EEOC's dismissal of the appeal unless you explain, in writing, extenuating circumstances which prevented filing within the prescribed time limit. In this event, extending the time limit and accepting the appeal will be discretionary with the EEOC.

If you file an appeal with the EEOC's Office of Federal Operations, you may thereafter file a civil action in an appropriate U.S. District Court **within 90 calendar days** of your receipt of the Office of Federal Operations' decision. A civil action may also be filed after 180 calendar days of your appeal to the EEOC, if you have not received a notice of final action on your appeal.

#### Right to file a civil action

In lieu of filing an appeal with the Equal Employment Opportunity Commission, you may file a civil action in an appropriate U.S. District Court **within 90 calendar days** of your receipt of this decision. If you choose to file a civil action, that action should be captioned **Victor Castro vs. Louis DeJoy, Postmaster General, U.S. Postal Service**. You may also request the court to appoint an attorney for you and to authorize the commencement of that action without the payment of fees, costs, or security in such circumstances as the court deems just. Your application must be filed within the same 90-day time period for filing the civil action.

Lee Davis

Lee Davis  
EEO Services Analyst

January 23, 2023

Date

Attachment: EEOC Form 573, "Notice of Appeal/Petition"  
PS Form 2570 (DRS Inquiry Report)

29 C.F.R. §1614.107(a)(1) provides that an agency shall dismiss a complaint, or portion thereof, that fails to state a claim. The regulations also provide that an agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age, or disabling condition. 29 C.F.R. § 1614.103; §1614.106(a). In order to establish standing to file a complaint in connection with the federal-sector EEO complaint process, you must be either an employee or an applicant for employment of the agency against which the claim is filed. 29 C.F.R. §1614.103(c). Claims against agencies filed by independent contractors or the employees of contractors fail to state a claim. See Mallory v. Environmental Protection Agency, EEOC Request No. 05950142 (April 12, 1996). Thus, it must first be determined whether you could be considered an agency employee or applicant for employment within the meaning of Section 717(a) of Title VII of the Civil Rights Act of 1964, as amended.